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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR                | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-------------------------------------|---------------------|------------------|
| 09/980,227      | 03/25/2002  | Albert Louis Victor Jozef Claessens | 236551N2PCT/US      | 9957             |

7590

03/13/2003

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EXAMINER

NGO, LIEN M

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 03/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/980,227

Applicant(s)

CLAESSENS, ALBERT LOUIS  
VICTOR JOZEF

Examiner

LIEN TM NGO

Art Unit

3727

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 February 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 32-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 32-62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6</u> . | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 3727

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. The drawing does not show the cross section symbolic of thermoplastic elastomer material as set forth in claims 32, 33, 47, 50, 51, 57 and 60, and the method for producing a protective cap (claim 60-62). Therefore, the thermoplastic elastomeric material and the method for producing a protective cap must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the proper of the cross section symbolic of thermoplastic elastomer material, and the method for producing a protective cap as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Art Unit: 3727

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: for example: seal "39". A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### ***Claim Objections***

4. Claims 32-62 are objected to because of the following informalities:

In claims 32 and 33, "Moulding" at the beginning of the claims should be --A moulding--.

In claims 34-46, "Moulding" at the beginning of the claims should be --The moulding--.

In claim 47, "Protective cap" at the beginning of the claim should be --A protective cap--.

In claims 48 and 49, "Protective cap" at the beginning of the claims should be --The protective cap--.

In claims 50, 51, 57 and 60, "Method" at the beginning of the claims should be -- A method--.

In claims 52-56, 58, 59, 61 and 62, "Method" at the beginning of the claims should be -- The method--.

#### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3727

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 32-62 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 32, 33, 50, 51, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

In claims 40, 57 are indefinite because it can not be determined what is required by "a predominantly thick...", and in claim 57, "such as for example" is indefinite.

In claim 43, it can not be determined what is required by " 18".

In claims 47 and 60, "comparatively" is indefinite.

In claim 50, line 5, "the moulding" lack antecedent basis.

Claims 50-62 are indefinite because the method claims does not include positive steps delimiting how the methods is actually practice.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

Art Unit: 3727

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
8. Claims 32-36, 38-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Thijs et al. (5,163,919). Thijs et al. disclose, in figs. 1 and 2, a molding or a stopper comprising a thermoplastic elastomeric material with a mineral filler contain of at least 30% (see col. 4, lines 35-45), a top with a smooth surface being offset outwards, and wherein the stopper top has a central region of smaller wall thickness and edge region of greater wall thickness.

Note that, the process limitations are not considered for patentability in product-by-process claims. See MPEP2113.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 32-37, 40-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matukura et al. (4,441,621) in view Thijs et al.. Matukura et al. disclose a mould or a stopper comprising limitations substantially as claimed, except Matukura et al. do not disclose the mould comprising at least 30% of a mineral filler. Thijs et al. teach a stopper comprising more than 30% of mineral filler. Therefore, it would have been obvious to one having ordinary skill in the art at

Art Unit: 3727

the time the invention was made to provide the Matukura et al. stopper with a mineral filler, as taught by Thijs et al., in order to provide a suitable hardness to the stopper.

11. Claims 47-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thibault et al. (5,607,400) in view Thijs et al.. Thibault et al. disclose a elastomeric protective cap comprising limitations substantially as claimed, except Thibault et al. do not disclose the protective cap comprising at least 30% of a mineral filler. Thijs et al. teach a stopper comprising elastomeric material with more than 30% of mineral filler. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the Thibault et al. cap with a mineral filler, as taught by Thijs et al., in order to provide a suitable hardness to the cap.

12. Claims 50, 54, 56-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thijs et al. in view of Masui et al. (5,700,416 ). Thijs et al. do not disclose the method for product the mould by a hot runner injection. Masui et al. teach, a method for produce a mould by a hot runner injection. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make Thijs et al. stopper by a hot runner injection, as taught by Masui et al., in order to form a mould as a smooth-surfaced mark.

13. Claims 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Derksen (5,678,713) in view of Thijs et al. and further in view of Masui et al. (5,700,416 ). Derksen discloses, in fig. 3, a mould 7 is made by molding injection over with another plastics. Thijs et al. teach a mould with at least 30% of a mineral filler. The combination of Derksen in view of Thijs

Art Unit: 3727

et al. does not disclose the method for product the mould by a hot runner injection. Masui et al. teach a method for produce a mould by a hot runner injection. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the mould of Derksen in view of Thijs et al. by a hot runner injection, as taught by Masui et al., in order to form a mould as a smooth-surfaced mark.

14. Claim 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matukura et al. (5,678,713) in view of Thijs et al. and further in view of Masui et al. (5,700,416).. The combination of Matukura et al. in view of Thijs et al. does not disclose the method for product the mould by a hot runner injection. Masui et al. teach a method for produce a mould by a hot runner injection. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the mould of Matukura et al. in view of Thijs et al. by a hot runner injection, as taught by Masui et al., in order to form a mould as a smooth-surfaced mark.

15. Claims 60-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thibault et al. in view of Thijs et al. Thibault et al. in view of Thijs et al. does not disclose the method for product the protective cap by a hot runner injection and performed in the region of the cap hat. Official notice is taken that it is well known in the art to form a mould by a hot runner injection and performed in the region of the top surface. . Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the cap of Thibault in view of Thijs et al. by a hot runner injection and performed in the region of the cap hat in order to



Art Unit: 3727

form a mould as a smooth-surface mark for forming a cap with a smooth surfaced mark as one desired.

***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Nishida et al. and Mitate teach method of producing plastic moulds with a hot runner injections.

EU patent 229204 teaches a protective cap having a solid cap hat and a thin wall cap neck.

Art Unit: 3727

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Ngo whose telephone number is (703) 305-0294. The examiner can normally be reached Monday through Friday from 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful. The examiner's supervisor, Lee Young, can be reached at (703)308-2572. The Group FAX number is (703) 305-3579.

Any inquiry of a general nature or relating to the status of the application should be directed to the Group receptionist at (703) 308-1148.



Lien Ngo

March 9, 2003



LEE YOUNG  
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